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EXAMINER

AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 10/05/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/540,558
Filing Date: March 31, 2000
Appellant(s): FLANAGAN, TOM

Kendal M. Sheets
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 2, 2004

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(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because the independent claims merely recite the same invention in different embodiments (i.e. claim 1 recites a system, claim 15, recites a program product of the same system, claim 18 is a computer implemented method of the same system, and claim 21 is a method using the system of claim 1). As recited in 37 CFR 1.192 (c) (8), "merely pointing out differences in what the claims cover is not an

argument as to why the claims are separately patentable". Appellant has not sufficiently described as to why the independent claims are separately patentable, since the independent claims merely recite the same invention in different variations, and states as such on pages 7 and 8 of the Appeal Brief. By this rationale it is believed that all the claims stand and fall together since there is only one patentable invention described in the claims.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,121,593	Mansbery et al.	9-2000
6,587,879	Reynolds	7-2003
5,861,883	Cuomo et al.	1-1999
6,368,177	Gabai et al.	4-2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 5, 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "wherein said configuration data is located within the Proxy Browser program, or on said Internet server", however it was previously stated that the configuration data was located in "an embedded Internet server located in said

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electronic appliance" (claim 4). It is unable to be determined as to where the configuration data for the appliance is located. For examination purposes, it will be understood that the configuration data is located on the appliance in the embedded Internet server and the configuration data can be modified by the Proxy browser program or said Internet server. Correction is required.

Claim 7, recites the limitation "said server downloads said recipe file" however it was previously stated that the server contains the digital recipe file and the Proxy Browser program selects it. For examination purposes it will be understood that the oven downloads the recipe file. Correction is required.

Claims 1, 3-5, 7, 9, 15-17, and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansbery et al. (USPN 6,121,593) (hereinafter Mansbery) in view of Reynolds (USPN 6,587,879).

Referring to claim 1, Mansbery discloses a system for proxy browsing the Internet, comprising:

a first computer (remote computer) linked to the Internet (Figure 2, reference character 50);

a Proxy Browser Internet interface program hosted on said Internet linked computer (Figure 2, reference character 45);

an electronic appliance linked to a powerline network 150 which is connected to an appliance server 100 connected to the Internet, the electronic appliance comprises a unique CEBUS address on the powerline network (Figure 2, reference character 200);

wherein said Proxy Browser transmits a command through the Internet that directs an Internet server (i.e. "Tonight's menu Appliance Server" 100) to transmit a remote digital file (i.e. recipe file of commands to cook the dish selected by the user) selected by said Proxy Browser program to said electronic appliance address without said electronic appliance communicating with said proxy browser (all communication is mediated through the appliance server 100) and said digital file (i.e. file of commands of the dish recipe) executing on said client appliance (Figure 2, 9; col. 3, lines 1-8).

Mansbery does not disclose that the address of the electronic appliance is an IP address and said electronic appliance can actively receive electronic data transmissions from the Internet. In analogous art, Reynolds discloses another system for proxy browsing the internet wherein the electronic appliance (i.e. refrigerator, microwave, etc.) includes a network address, such as an IP address (col. 3, lines 20-25, 60-63), and said electronic appliance can actively receive electronic data transmissions from the internet (col. 4, line 25 to col. 5, line 11). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Reynolds with Mansbery to allow testing of remote devices having limited processing capabilities, such as consumer appliances and other types of electronic devices, thereby reducing the need of sending a service representative to the appliance to determine if the appliance is malfunctioning as supported by Reynolds (col. 1, lines 15-25, 45-50).

Referring to claim 3, Mansbery in view of Reynolds disclose the system for proxy browsing substantively as described in claim 1. Furthermore, Mansbery discloses the Proxy Browser program identifies said remote digital file and identifies an address (i.e. appliance name such as "stove" etc.) of said electronic appliance (Figure 9); and

said Internet server (appliance server 100) verifies said address and verifies a transmission of said remote digital file without interaction of said proxy browser program (the appliance server 100 does not notify the client software/browser that the download has been completed, merely just begins executing the digital recipe file) (Figure 9).

Mansbery does not disclose the address is an IP address of an electronic appliance. In analogous art, Reynolds discloses another system for proxy browsing the internet wherein the electronic appliance (i.e. refrigerator, microwave, etc.) includes a network address, such as an IP address (col. 3, lines 20-25, 60-63). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Reynolds with Mansbery to allow testing of remote devices having limited processing capabilities, such as consumer appliances and other types of electronic devices, thereby reducing the need of sending a service representative to the appliance to determine if the appliance is malfunctioning as supported by Reynolds (col. 1, lines 15-25, 45-50).

Referring to claim 4, Mansbery in view of Reynolds disclose the system for proxy browsing substantively as described in claim 1. Mansbery further discloses an

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embedded server located in said electronic appliance comprising configuration data (i.e. ReadDisplay) and operating status data (i.e. GetTemperatureLevel, GetStatus, etc.) for said electronic device (col. 5, lines 1-35). Mansbery does not specifically disclose that the embedded server in the electronic appliance is an embedded Internet server (i.e. it is connected to, and addressable from, the Internet). In analogous art, Reynolds discloses another system for proxy browsing the internet, wherein the embedded server in the electronic appliance is an embedded Internet server (i.e. Embedded HTTP Server 18) (Figure 1). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Reynolds with Mansbery to allow testing of remote devices having limited processing capabilities, such as consumer appliances and other types of electronic devices, thereby reducing the need of sending a service representative to the appliance to determine if the appliance is malfunctioning as supported by Reynolds (col. 1, lines 15-25, 45-50).

Referring to claim 5, Mansbery discloses configuration data (i.e. instructions and data to modify the configuration of the appliance) is located on said Internet server (appliance server 100) (col. 4, line 32 to col. 5, line 27).

Referring to claim 7, Mansbery discloses that said Proxy Browser program selects a digital recipe file from said Internet server (i.e. appliance server 100) to download to said home electronic appliance, where said home electronic appliance is

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an oven, and said oven is configured with baking instructions from said digital recipe file (col. 9, line 15 to col. 10, line 7).

Referring to claim 9, Mansbury discloses a system for proxy browsing the Internet as stated in the claims above. Mansbury does not disclose selecting an Internet Web page, and said Web page is downloaded into an Internet Browser on said second client computer. In analogous art, Reynolds discloses another system for proxy browsing the internet, wherein said Proxy Browser (test builder 4) selects an Internet Web Page (test case servlet 20) and said web page is downloaded by said server into an embedded Internet server on said electronic appliance (Figure 4). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Reynolds with Mansbury to allow testing of remote devices having limited processing capabilities, such as consumer appliances and other types of electronic devices, thereby reducing the need of sending a service representative to the appliance to determine if the appliance is malfunctioning as supported by Reynolds (col. 1, lines 15-25, 45-50).

Claims 15-17, and 18-25 are rejected for similar reasons as stated above. Furthermore Reynolds discloses the electronic appliance has at least one CPU, memory, and Internet networking capability (Figure 1; col. 3, lines 1-24).

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Claims 8 and 10, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansbury in view of Reynolds in view of Cuomo et al. (USPN 5,861,883) (cited by applicant in IDS) (hereinafter Cuomo).

Referring to claim 8, Mansbury in view of Reynolds discloses a system for proxy browsing the Internet as stated in the claims above. Mansbury in view of Reynolds does not disclose selecting a digital music file from an Internet server and said music file is downloaded and played on a said digital speakers linked to the Internet. Cuomo discloses another system for proxy browsing the Internet which discloses selecting a digital music file from an Internet server and said music file is downloaded and played on a said digital speakers linked to the internet (col. 5, lines 35-47). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Mansbury and Reynolds with Cuomo to ensure a master computer is appropriately synchronized with following client computers as stated in Cuomo (col. 5, lines 47-55).

Referring to claim 10, Mansbury in view of Reynolds discloses a system for proxy browsing the Internet as stated in the claims above. Mansbury in view of Reynolds does not disclose selecting a digital video file from an Internet server, and said digital video file is played on said digital video player linked to the Internet. Cuomo discloses selecting a digital video file from an Internet server, and said digital video file is played on said digital video player linked to the Internet (col. 1, lines 25-42; col. 5, lines 35-47).

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It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Mansbury and Reynolds with Cuomo to ensure a master computer is appropriately synchronized with following client computers as stated in Cuomo (col. 5, lines 47-55).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mansbury in view of Reynolds in view of Cuomo in view of Gabai et al. (USPN 6,368,177) (hereinafter Gabai).

Mansbury in view of Reynolds in view of Cuomo discloses a system for proxy browsing the Internet as stated in the claims above. Mansbury in view of Reynolds in view of Cuomo do not disclose selecting a digital game configuration file from an Internet server, and said digital configuration game file is downloaded to a game or toy that is linked to the Internet, and said game file reconfigures said game or toy to provide new scenarios and strategies for entertainment. Gabai discloses selecting a digital game configuration file from an Internet server, and said digital configuration game file is downloaded to a game or toy that is linked to the Internet, and said game file reconfigures said game or toy to provide new scenarios and strategies for entertainment (col. 51, lines 20-30; Figure 33 and relevant portions of the disclosure). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Gabai with Mansbury, Reynolds and Cuomo to provide

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messages to the user which can be used for effecting sales over the Internet as stated in Gabai (col. 2, lines 35-40).

(11) Response to Argument

In the Brief, Appellant argues, in substance, that (1) it is prejudicial to cite new art for the first time in a Final Office action, (2) the Examiner has failed to provide evidence of a suggestion, teaching, or motivation to combine the cited references, (3) the Examiner "fell into the hindsight trap" when determining obviousness, (4) the Appliance Server 100 of Mansbery is not characterized as an "Internet Server", (5) the Appliances 200 of Mansbery clearly communicate with a remote client software 50 (Figure 2), and (6) the appliance server 100 of Mansbery does notify the client software/browser that the download has been completed.

As to point (1), it is present practice of the Office that second and subsequent actions may be made final except when an Examiner introduces a new ground of rejection that is not necessitated by applicant's amendment. See MPEP 706.07(a).

As to point (2), In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so

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found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Reynolds with Mansbery to allow testing of remote devices having limited processing capabilities, such as consumer appliances and other types of electronic devices, thereby reducing the need of sending a service representative to the appliance to determine if the appliance is malfunctioning as supported by Reynolds (col. 1, lines 15-25, 45-50). One of ordinary skill in the art would appreciate the abilities of the Appliance to be accessible through the Internet as described in Reynolds, namely the testing of appliances as stated above, however, when taken in context with the Mansbery reference, one of ordinary skill in the art would be so inclined as to remotely control the Appliance of Reynolds through the Internet, not on a separate network, such as the CEBUS powerline network described in Mansbery.

As to point (3), In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

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1971). In this case, one of ordinary skill in the art would recognize the benefits of incorporating an appliance with an IP address in order to reduce processing and protocol translation, which is well known in the art to be a burdensome process.

As to point (4), the term "server" as defined in the Microsoft Computer Dictionary (© 2002, Microsoft Corporation) is "on the Internet or other network, a computer or program that responds to commands from a client." Figure 2 clearly shows the Appliance server 100 is connected to the Internet (see between reference characters 50 and 100). By this rationale, it is understood that the Appliance Server 100 of Mansbery is considered an "Internet Server".

As to point (5), attention is turned to Figure 9, after the recipe information is selected by the proxy browser program 925, the appliance server will control the appliance by transmitting the button press sequence to execute the cooking step 955. No communication is seen between the appliance and the proxy browser. All communication from the appliance is sent only to the appliance server.

As to point (6), attention is turned to Figure 9, Mansbery discloses sending program information to appliance server via the remote CORBA appliance server, (step 925) and if there is not enough time to complete the recipe an error is returned to the client 940. However if the download has executed, no response is sent back to the client indicating that the download is executed, it is only in this error state that the client

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communicates with the server, not when the download of the recipe program has been executed.

For the above reasons, it is believed that the rejections should be sustained.

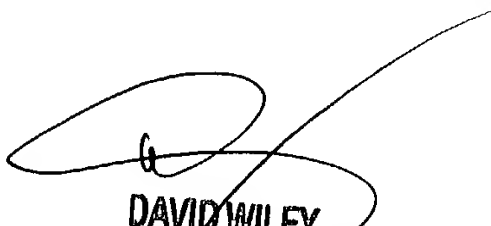
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